

REMARKS

This application pertains to a novel plastic film comprising a gas barrier layer which has a oxygen impermeability which is largely independent of moisture content of the packaged product or the surroundings (page 2, first paragraph).

Claims 1-5, 7-21 and 23-26 are pending.

Claims 1-5, 6-13 (Applicants believe the Examiner meant 7-13), 15-21 and 23-26 stand rejected under 35 U.S.C. 103(a) as obvious over Ramesh et al (US 5,763,095) in view of Edwards et al. (2002/0034622).

Applicants have previously pointed out to the Examiner that "Ramesh" teaches the loss of the oxygen barrier properties with increasing relative humidity unless the EVOH-amount in a blend of EVOH and a nylon-copolymer is kept in a low amount.

Moreover, the declaration of Mr. Bernig proves this effect and the surprising results achieved with the presently claimed invention. Interestingly, in the examples wherein EVOH is also used as a component in the oxygen barrier layer no oxygen transmission rates are disclosed.

Therefore, Applicants' argument that "Ramesh" discloses in column 5 that with an increasing amount of EVOH in a blend with a nylon-copolymer EVOH loses much of its oxygen barrier properties with increasing relative humidity has not been overcome by the arguments of the Examiner in the last Office Action.

In addition, the Examiner has not addressed Applicants' argument against the combination of the "Ramesh" reference with the "Edwards" reference based on the disclosure of "Edwards" that the advantages disclosed in the "Edwards" reference can only be achieved if **nylon 6/66** is used as polyamide in the polymer blend of the oxygen barrier layer. If other polyamides are used instead of nylon 6/66 a lot of problems have to be faced.

Therefore, the statement of the Examiner that the claimed polyamides are **partly** identical with the polyamide disclosed in "Edwards" is irrelevant. According to the teaching of "Edwards" it has to be a very special polyamide, namely a polyamide 6/66, which should be the only polyamide. Therefore, it is not enough that component I of the multipolyamide claimed in claim 1 of the present application is such a polyamide.

The Edwards reference therefore does not lead a person skilled in the art to increase the amount of EVOH in the oxygen barrier layer. This is especially true in view of the fact that the multipolyamide of the presently claimed invention is a polyamide mixture not identical with the only required polyamide mentioned in the "Edwards" reference.

As previously pointed out Ramesh teaches that the oxygen barrier of a packaging film containing a blend of EVOH is impaired because the oxygen transmission properties of such a barrier layer increases with increasing amounts of EVOH. Therefore, according to the teachings of Ramesh it is recommended that only a minor portion of EVOH be incorporated into the nylon-copolymer containing layer, if a low oxygen transmission rate of the total film structure is needed.

The foregoing teaching of Ramesh would prejudice those skilled in the art against the use of a higher amount of EVOH as a blend component with a nylon-copolymer. According to the Examples of Ramesh, wherein such a blend was used for a barrier layer, the physical properties such as oxygen transmission at different relative humidities are not addressed.

The declaration of Walter Bernig, filed on November 25, 2008, demonstrates that the presently-claimed films keep a low oxygen transmission rate even at relatively high relative humidity whereas the known multilayer film containing 20 wt.% of EVOH are very sensitive to an increase of the relative humidity as far as the oxygen transmission rate is concerned.

This is clear evidence that the presently-claimed multilayer structures have surprising advantages in comparison to the known art, which is not the result of usual scientific variations and testing by a person skilled in the art.

According to paragraph [0070] on page 6 of the Edwards (2002/0034622) reference only a certain polyamide, namely nylon 6/66, has to be used for the polymer blend of the oxygen barrier layer in order to achieve the desired advantages

According to paragraph [0072] the use of other polyamides create a lot of problems.

Therefore it was totally surprising and unexpected that Applicants' multipolyamide provides a film very useful for successfully packaging perishable products.

Applicants' claims cannot therefore reasonably be seen as obvious over any combination of Ramesh and Edwards, and the rejection of claims 1-5, 6-13, 15-21 and 23-26 under 35 U.S.C. 103(a) as obvious over Ramesh et al (US 5,763,095) in view of Edwards et al. (2002/0034622) should now be withdrawn.

Claim 14 stands rejected under 35 U.S.C. 103(a) as obvious over Ramesh et al (US 5,763,095) in view of Edwards et al. (2002/0034622) in view of Vadhar (US 6,333,061). The Examiner relies on Vadhar for a teaching of a coloring agent. No

coloring agent could possibly overcome the differences discussed above, and the rejection of claim 14 under 35 U.S.C. 103(a) as obvious over Ramesh et al (US 5,763,095) in view Edwards et al. (2002/0034622) in view of Vadhar (US 6,333,061) should be withdrawn.

In view of the present amendments and remarks it is believed that claims 1-5, 7-21 and 23-26 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

Respectfully submitted,
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